

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: SURESH KUMAR

APPLICATION NO.: 09/531,703

FILED: MARCH 20, 2000

FOR: **METHOD AND SYSTEM FOR BIDDING
ON MULTIPLE AUCTIONS**

EXAMINER: F. POINVIL

ART UNIT: 3692

CONF. NO: 6170

Reply Brief

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF UNDER 37 C.F.R. § 41.41

Sir:

This reply brief is in response to the Examiner's Answer dated October 23, 2006.

I. **REPLY TO ANSWER**

- A. **The Examiner is confusing Appellant's bidding technique that specifies what to bid at various auctions with an auction type**

Appellant's "bidding technique" or "bidding plan" is specified by a bidder, and are rules for managing sequential and or parallel bidding at multiple auctions. (Appeal Brief, Section VII.A.1.) In the same section of the Appeal Brief, Appellant further clarifies that the bidding technique or bidding plan specifies what bids to place at multiple auctions, and the conditions under which the specified bids are to be placed on behalf of the bidder.

On pages 5 and 6 of the Examiner's Answer, the Examiner states the following:

Furthermore, it can also be seen that the different types of auctions are different auctions as the Appellant lists the different types or distinct types of auctions being operated simultaneously. Furthermore, it is noted that each of these types of auctions is managed under different rules. *For example, an English auction is an open type of auction offering one item for sale. The auctioneer or computer system begins presenting low bids to bidders. Buyers call out bids to overcome a current price. The last remaining bidder wins the item and pays the price that he/she has bid. Whereas, a Vickery auction includes a variety of goods and allows the combination of bids. Bidders submit bids and the winning goods are submitted to bidders who believe the goods are of great value to them. The winning bidder pays the difference between the sum of every other bidders' bid value without that bidder's bid value and the sum of every other bidders' bid value including the winning bidder's bid value.* Thus, as can be seen, each of the different auctions performed in the system of Ausubel involves different rules or bidding techniques. Furthermore, Ausubel teaches that a bidder may provide a listing of bid increments and a user may modify their bids (see columns 11 and 12 of the reference). Thus, a bidder may participate in any of the listing auctions wherein each auction has distinct rules thereby allowing bidders to submit bids in accordance with the type of auctions being engaged in. Furthermore, auctions for different objects or items are also different auctions. A bidder may propose different bidding techniques in proceeding in an auction.

Appellant points out that the Examiner appears to be confused regarding Appellant's bidding technique or bidding plan. As noted by the Examiner, each type of auction is managed under different rules, and the rules specify how to determine a winning bidder and the amount of the winning bid. In contrast to Appellant's bidding technique or bidding plan, the bidding rules the Examiner asserts as being analogous to Appellant's bidding technique or bidding plan is in actuality a definition of the auction in that they specify the type of auction (i.e., auction type). For example, as noted by the Examiner, the bidding rules in an English auction specify that "[b]uyers call out bids to overcome a current price," and "[t]he last remaining bidder wins the item and pays the price that he/she has bid." (Examiner's Answer, p. 6.) Accordingly, a specific auction's bidding rules have nothing to do with placing bids on behalf of a bidder, and the bidding rules that govern the auction are different from the claimed bidding technique and bidding plan.

Moreover, the Examiner's new assertion that Ausubel's auction type corresponds to Appellant's bidding technique is contrary to and inconsistent with other positions that the

Examiner takes in the Answer. For example, the Examiner states that a "bidder may propose different bidding techniques in proceeding in an auction." (Examiner's Answer, p. 6.) If a bidding technique is the same as an auction type as the Examiner suggests, then the Examiner is taking the position that a "bidder may propose different [auction types] in proceeding in an auction." Appellant knows of no situation in which a bidder at an auction can propose different auction types, and Ausubel makes no such suggestion. Furthermore, it would seem nonsensical to allow a bidder to change the type of an auction (e.g., English to Vickery). As another example, the Examiner states "Ausubel also teaches providing a bidding technique to apply to the indicated auctions . . . [and] a bidder provides rules regarding bidding preferences" referring to Ausubel at 10:56-12:19. (Examiner's Answer, p. 3.) This section of Ausubel describes "bidding rules" as indicating the condition under which a bidder wants to place a bid (e.g., a bid for "40,000 shares at a price of \$10"). These bidding rules are not the same as the type of an auction (i.e., English or Vickery) as the Examiner now suggests.

B. Appellant's typographical error is not an admission as the Examiner suggests

On page 7 of the Examiner's Answer, the Examiner states the following:

Furthermore, the appellant has stated that "Appellant's respectfully asserts [*sic*] that the Office Action's assertion that a single auction for multiple items is identical to multiple auctions is contrary is how one skilled in the art views such an auction". The appellant's statement is evidence that "multiple auctions" and "a single auction of multiple items" can be considered as a single auction or as multiple auctions of one or more items.

The Examiner is relying on a sentence of Appellant's Appeal Brief that clearly includes a typographical error. In particular, Appellant's statement that "[t]he Examiner's assertion that a single auction for multiple items is identical to multiple auctions is contrary is how one skilled in the art views such an auction" should have instead read "[t]he Examiner's assertion that a single auction for multiple items is identical to multiple auctions is contrary to how one skilled in the art views such an auction." (emphasis added.) First,

the phrase "assertion . . . is contrary is how . . ." does not make sense and clearly includes a typographical error in that "contrary is" should have been "contrary to". The Examiner should have realized this awkward language resulted from a typographical error. Second, Appellant's other statements in its Appeal Brief make clear that Appellant does not agree with the Examiner's position that multiple auctions and a single auction of multiple items can be considered the same. For example, on page 10 of the Appeal Brief, Appellant stated that "Appellant respectfully submits that those skilled in the auction art do not consider a single auction for multiple items to be the same as multiple auctions." On page 11 of the Appeal Brief, Appellant stated that "[a]lthough the Office Action states to the contrary, Appellant has not been provided any support for the seemingly contrary position" immediately preceding its erroneous statement, and that "[a]s explained above, an auction for multiple items is not the same as multiple auctions." Appellant also stated on page 14 of the Appeal Brief that "an auction for multiple items is not the same as multiple auctions," and on pages 22 and 23 that "[t]he Office Action's assertion that a single auction for multiple items is identical to multiple auctions is not supported by Ausubel and is contrary to how one skilled in the art views such an auction." Therefore, notwithstanding Appellant's typographical mistake in one sentence in the Appeal Brief, Appellant respectfully submits that the remainder of the Appeal Brief makes clear Appellant's position regarding the distinction between a single auction for multiple items and multiple auctions, and that the Examiner should have realized that Appellant's statement relied upon by the Examiner did in fact contain an error and, therefore, should not have been relied upon by the Examiner.

For at least these reasons, along with the reasons presented in Appellant's Appeal Brief, each of claims 1-6, 8-32 and 40-47 has been improperly rejected. Accordingly, Appellant seeks the reversal of the rejection of these claims.

Dated: 12/26/2009

Respectfully submitted,
Perkins Coie LLP

A handwritten signature in black ink, appearing to read "Do Te Kim", is written over a horizontal line.

Do Te Kim
Registration No. 46,231

Customer No. 25096
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3009
(206) 359-8000
FAX: (206) 359-7198